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BROOKLYN OFFICE



U.S. Department of Justice

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July 20, 2012

ELECTRONICALLY FILED

Honorable Nicholas G. Garaufis
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *State of New York v. U.S. Army Corps of Engineers, et al.*
CV-11-2599 (Garaufis, J.) (Pollak, M.J.)
Delaware Riverkeeper Network et al. v. U.S. Army Corps of Engineers, et al.
CV-11-3780 (Garaufis, J.) (Pollak, M.J.)
Damascus Citizens for Sustainability v. U.S. Army Corps of Engineers, et al.
CV-11-3857 (Garaufis, J.) (Pollak, M.J.)

Dear Judge Garaufis:

In accordance with the Court's Order dated July 10, 2012, the parties to the above-referenced actions write respectfully to inform the Court of the intended division of time among counsel on each issue for the oral argument scheduled for July 24, 2012.

With regard to the structure of argument set forth in the Court's Order, the parties respectfully request that the schedule be amended so that there are two argument topics, instead of three, *i.e.*, the first argument topic would be Defendants' jurisdictional challenges to Plaintiffs' claims, and the second argument topic would be a combination of Defendants' motions for dismissal for failure to state a claim and Plaintiff's contention that there are no genuine issues of material fact as to Defendants' liability. If this amended schedule is acceptable to the Court, the parties would present argument of up to twenty-five minutes for each side on the first topic, and up to thirty-five minutes for each side on the second topic. The parties make this request because they believe that the second and third topics encompass such similar issues that it would be most efficient to argue them together.

Subject to the Court's approval of this revised schedule, counsel would divide their time as follows:

Defendants' jurisdictional challenges to Plaintiffs' claims: Defendants' argument time would be divided between Assistant United States Attorney Sandra Levy's presentation of argument of up to twenty minutes, and Kenneth Warren's presentation of argument of up to five minutes. Plaintiffs' argument time would be divided equally between Assistant Attorney General Andrew Frank and Lisa Perfetto.

Defendants' motions for dismissal for failure to state a claim and Plaintiffs' contention that there are no genuine issues of material fact as to Defendants' liability: Defendants' argument time would be divided between Kenneth Warren's presentation of argument of up to twenty-five minutes, and Assistant United States Attorney Sandra Levy's presentation of argument of up to ten minutes. Plaintiffs' argument time would be divided equally between Assistant Attorney General Philip Bein and Susan Kraham.

As noted, all parties join in the request for this proposed amended oral argument schedule.

Respectfully submitted,

LORETTA E. LYNCH
United States Attorney

By: /s/ Sandra L. Levy
Sandra L. Levy
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cc: Counsel for Parties and *amicus curiae*/Putative Intervenor-Defendants (by ECF)

*Schedule approved
to order.*
s/Nicholas G. Garaufis

7/23/12